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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, October 18, 2002

JOINT PETITION OF

CASE NO. PUC-2002-00121

ACSI LOCAL SWITCHED SERVICES, INC.
d/b/a E.SPIRE AND AMERICAN COMMUNICATION
SERVICES OF VIRGINIA, INC. d/b/a E.SPIRE

and

XSPEDIUS MANAGEMENT CO. SWITCHED
SERVICES, LLC, AND XSPEDIUS
MANAGEMENT CO. OF VIRGINIA, LLC

For approval of (i) the transfer of substantially all of the assets, including the customer contracts, of ACSI of Virginia to the Xspedius of Virginia Entities; and (ii) the discontinuance of telecommunications services in Virginia by the e.spire Operating Entities

ORDER GRANTING APPROVAL

On July 23, 2002, ACSI Local Switched Services, Inc. d/b/a e.spire, American Communication Services of Virginia, Inc. (“ACSI of Virginia”) d/b/a e.spire, Xspedius Management Co. Switched Services, LLC, and Xspedius Management Co. of Virginia, LLC (“Xspedius of Virginia”), filed a joint petition with the State Corporation Commission (“Commission”) requesting authority to consummate a transaction that will enable ACSI of Virginia to (a) transfer substantially all of its assets, including its customer base, to Xspedius of Virginia; and (b) transfer the current customers of ACSI of Virginia to Xspedius of Virginia.

Xspedius Management Co. Switched Services, LLC, and Xspedius of Virginia are limited liability companies formed under the laws of Delaware. Xspedius of Virginia’s principal place of business is located in O’Fallon, Missouri. Xspedius Management Co., LLC (“Xspedius”), is

the parent company of the Xspedius Operating Entities. The Xspedius Operating Entities consist of Xspedius Management Co. Switched Services, LLC, and Xspedius Management Co. of Virginia, LLC. None of the Xspedius Operating Entities are currently authorized to operate in Virginia.¹ Xspedius Corp., another affiliate, holds authorizations to provide local, long distance, and integrated telecommunications services in Alabama, Louisiana, Mississippi, North Carolina, and Tennessee. Xspedius and its operating subsidiaries, including the Xspedius Operating Entities, are referenced as the Xspedius Companies.

ACSI Local Switched Services, Inc. d/b/a e.spire is a Maryland corporation with its principal place of business located in Herndon, Virginia. ACSI of Virginia is a Virginia corporation with its principal place of business also located in Herndon, Virginia. Collectively, ACSI of Virginia and Xspedius of Virginia are referred to as the “Petitioners.”

e.spire Communications, Inc. d/b/a e.spire (“e.spire”) is the parent company of the e.spire Operating Entities. e.spire, through its affiliates, is an integrated communications provider offering traditional local and long distance telecommunications services, dedicated Internet access, and advanced data solutions, including ATM and frame relay. e.spire is currently authorized, through its operating affiliates, to provide facilities-based and resold competitive local exchange and intrastate interexchange telecommunications services in virtually all 50 states. In Virginia, ACSI of Virginia holds certificates of public convenience and necessity (“CPCN”) to provide local exchange and interexchange telecommunications services.² The e.spire Operating Entities consist of ACSI Local Switched Services, Inc. d/b/a e.spire and

¹ Xspedius of Virginia also filed an application for certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services and for interim operating authority in Case No. PUC-2002-00122, and by Order dated August 2, 2002, was granted interim operating authority in that proceeding.

² ACSI of Virginia was granted CPCN No. T-366 to provide local exchange telecommunications services in Case No. PUC-1996-00087 (PUC960087) on November 8, 1996, and was granted CPCN No. TT-27A to provide interexchange telecommunications services in Case No. PUC-1996-00087 on that same day. ACSI of Virginia’s request to cancel such certificates and its existing tariffs is docketed as Case No. PUC-2002-00139.

American Communication Services of Virginia, Inc. d/b/a e.spire. e.spire and the e.spire Operating Entities are referenced as the e.spire Companies.

The Petitioners request approval of a transaction that will enable ACSI of Virginia to (a) transfer substantially all of its assets, including its customer base, to Xspedius of Virginia, and, therefore, (b) transfer the current customers of ACSI of Virginia to Xspedius of Virginia without the interruption of service. Once the transaction is complete, Xspedius and its Operating Subsidiaries will possess all of e.spire's assets, including telecommunications facilities, customer contracts, and state authorizations.

On March 22, 2001, the e.spire Companies filed a voluntary petition for Chapter 11 protection with the United States Bankruptcy Court for Delaware ("Bankruptcy Court"). The bankruptcy filing temporarily relieved the e.spire Companies from their debt payment obligations, but the e.spire Companies were unable to raise sufficient funding while in Chapter 11 to emerge from bankruptcy as a going concern. This led to e.spire's decision to auction its assets, and the auction took place between May 20 and May 22, 2002. After the auction, the e.spire Companies and Xspedius agreed that Xspedius and its Operating Entities would acquire substantially all of e.spire's telecommunications assets and its existing customer base.

On May 29, 2002, the final bankruptcy court hearing was held concerning the sale of certain assets of the e.spire Companies, including those of the e.spire Operating Entities as set forth in the Asset Contribution Agreement. This hearing also concerned the transfer of the e.spire Companies' assets, regulatory authorizations, and customers to the Xspedius Companies.

On June 5, 2002, the Bankruptcy Court approved the terms of a transaction, pursuant to which Xspedius of Virginia will acquire substantially all of the assets of ACSI of Virginia,

including most of its customer accounts and contracts. The Agreement calls for the e.spire Companies to convey to Xspedius and its operating subsidiaries substantially all of the assets and properties of the e.spire Companies in all markets except New York and Philadelphia, together with certain assets and liabilities. Xspedius of Virginia is acquiring the assets and not the stock of ACSI of Virginia, and ACSI of Virginia will, therefore, no longer provide telecommunications services in Virginia.

To ensure the continued provision of service to the e.spire Companies' customers while the necessary approvals are obtained, the Bankruptcy Court approved a Management Agreement that provides for the Xspedius Companies to provide to the e.spire Companies management services and to fund the continued operations of the e.spire Companies. Upon completion of the approval process, the e.spire Companies' assets and their customers will be transferred to the Xspedius Companies. ACSI of Virginia will no longer provide local exchange, interexchange, and dedicated telecommunications services in Virginia after the transfer.

THE COMMISSION, upon consideration of the joint petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that the transfer of assets of ACSI of Virginia to Xspedius of Virginia, as described herein, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia, approval is hereby granted for the transfer of the assets of ACSI of Virginia to Xspedius of Virginia as described herein; and
- 2) There appearing nothing further to be done in this matter, it is hereby dismissed.